IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 18160 of 2004

Between:

1 Pyla Abbai Naidu, S/o. Rajulu, aged about 40 years,

Occ: Short-term Loans Accountant,
Kotananduru PACS, Kothanaduru Village & Mandal,
R/o. K.s. Kothuru, K. Kottam Post, Kotananduru Mandal,

East Godavari District.
2 Adigarla Venkata Ramana Murthy, S/o. Apparao,

Aged about 32 years, Occ: Clerk,
Kotananduru PACS, Kothanaduru Village & Mandal,
R/o. K. Kottam Post, Kotananduru Mandal,

East Godavari District.
3 Pampananboina Sivnnarayana, S/o. Konda Abbai,

Aged about 42 years, Occ: Attender,
Kotananduru PACS, Kothanaduru Village & Mandal,
R/o. K. Kottam Post, Kotananduru Mandal,

East Godavari District.

..... PETITIONERS

AND

1 The Commissioner for Cooperation and

Registrar of Cooperative Societies,
Nampally, Hyderabad.
2 The District Cooperative Officer, Kakinada, East Godavari District.
3 The Divisional Cooperative Officer, Peddapuram,

East Godavari District.
4 Kotananduru PACS, Kothanaduru Village & Mandal,

East Godavari District, Rep. by its chairman/PIC.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 4th respondent in not permitting the petitioners to perform their duties as arbitrary, illegal, contrary to the provisions of Section 116-C of the A.P. Co-operative Societies Act, 1964 G.O.Ms.No.94 Agriculture and Cooperation (Coop-VI) Department, dated 28-02-2004, the provisions of the A.P. Shops & Establishments Act, 1988 and violation of principles of natural justice apart from being violative of the fundamental rights guaranteed to the petitioners under Article 14 and 21 of the Constitution of India.

Counsel for the Petitioner: MR.V.R.REDDY KOVVURI

Counsel for the Respondent Nos.1 to 3: GP FOR COOPERATION

Counsel for the Respondent No.4: SMT.B.VIJAYALAKSHMI

The Court made the following:

ORDER:

Declaring the action of the 4th respondent in not permitting the writ petitioner to perform the duty as arbitrary and illegal, the present writ petition is filed.

The 1st petitioner was appointed as an Accountant,

2nd petitioner was appointed as a Clerk and the 3rd petitioner was appointed as an Attender on 01.05.1992 in the respondent society. According to them, their services were also regularized and they are being paid regular pay scale. It is stated that the working capital of the 4th respondent is more than 6.8 crores. According to the writ petitioner, the appointments in the Primary Agricultural Cooperative Societies (for short 'PACS') should be made strictly in accordance with the fiscal outer limit fixed under Section 116 (c) of the A.P.Cooperative Societies Act (for short 'the Act'). According to the petitioner, the

4th respondent society is healthy society and is running in profits and is able to meet the expenditure towards pay and allowances of all working employees. Hence the present writ petition.

A counter affidavit is filed by the 4th respondent stating that challenging G.O.Ms.No.94, Agriculture & Cooperation, (Coop.VI) Department, dated 28.02.2004, writ petition is filed and the same was dismissed on 09.09.2004. Thereafter, the present writ petition is filed. As a matter of fact, there are Nil gross profits for the year 2003-04 and its working capital is Rs.11,44,260/-. Section 116 (c) of the Act provides either 30% of gross profit or 2% of the working capital in terms of accruals in a year, whichever is less. The respondent society is not in a position to pay salaries to the staff. G.O.Ms.No.94, dated 28.02.2004 provides certain benefits to the Agricultural

Cooperative Societies, exempting them from 116 (c), wherever there is Nil gross profits. The said G.O., depending on the business and turnover of the Society, provides for loan to the Society for payment of salaries to the staff of the said Society, depending upon its eligibility. The respondent society is eligible for one secretary post and two clerks and one attender. The resolution dated 30.07.2004 was passed removing the petitioner in terms of Section 116 (c) of the Act, as well as G.O.Ms.No.94, dated 28.02.2004. It is not correct to state that the petitioners were not put on notice and in fact termination orders dated 31.07.2004 along with one months pay in lieu of notice as contemplated under A.P.Shops & Establishment Act, 1988 were sent to the petitioners under registered post with acknowledgment due and they were returned under the caption 'refused'. Therefore, the petitioners have deemed knowledge about the termination orders. Hence the respondents pray to dismiss the writ petition.

The learned counsel appearing for the petitioner contended that the society is not running in losses. The

4th respondent did not seek financial assistance in terms of G.O.Ms.No.308 for payment of salaries/emoluments itself goes to show that the 4th respondent is a healthy society and is running in profits. Such is the case, in any arbitrary manner, the 4th respondent cannot permit the petitioners to perform their duties. As such refusal is contrary to the Act and G.O.Ms.No.94, Dated 28.02.2004.

On the other hand, the learned Government Pleader, appearing for the respondents 1 to 3, contended that the petitioners were terminated by an order dated 31.07.2004 and the said termination is in terms of Sec.116 (c) of the Act as well as G.O.Ms.No.94, dated 28.02.2004 in accordance with law, and therefore, the writ petition does not deserve any relief from this Court.

On the other hand, the learned counsel for the

4th respondent contended that the termination order dated 31.07.2004 has been sent to the petitioners by registered post and the same was refused, that the said termination order dated

31.7.2004 is not under challenge, and therefore, the writ petition is devoid of merit. She further contended that the respondent society is running in losses and the termination orders were issued in accordance with law.

The petitioners filed reply affidavit reiterating that the 4th respondent society is a healthy society and the contention of the respondents that 2% of working capital is Rs.11,44,260/- is not correct and if the working capital is calculated at 2%, and same amounts to Rs.13,60,000/-k. Even assuming 2% as working capital as stated by the 4th respondent, is more sufficient for payment of salaries. There are eight employees working in the 4th respondent society and the total salary payable to them is Rs.16,480/- and if the same is multiplied with 12, the same amounts to Rs.1,97,760/- per year. Therefore, the contention of the 4th respondent that it is not in a position to pay the salaries is untenable. Hence he prays to allow the writ petition.

As per G.O.Ms.No.308 dated 19.11.2003, the following categories of Primary Agricultural Cooperative Societies were exempted from the provisions of Section 116 (c) of the Act and Rule-29 of the said Rules in the following manner:

> "(1) All Primary Agricultural Cooperative Societies which do not have gross profit are exempted from the operation of Section 116-C of the APCS Act for 3 years from the date of issue of this order.
>
> (2) All Primary Agricultural Cooperative Societies which have nominal gross profit which is not sufficient to meet the expenses of pay and allowances of at least one employee are also exempted from the provisions of Sec.116-C of the APCS Act and Rule-29 of APCS Rules for 3 years."

The exemption is being given in terms of Sec.131 of the Act subject to the following conditions:

1. The PACS, having no gross profit or gross profit less than Rs.50,000/- calculated in accordance with the rules, shall apply to the DCO concerned along with an action plan indicating how they plan to improve their financial position over a period not exceeding 3 years and thereby comply with Section 116-C of the APCS Act within that

duration.

2. The exemption shall be given for a period of 3 years i.e. for the years 2003-04, 2004-05 and d2005-06.
3. The PACS in this category shall not employ more than 1 person and the total cost of management of PACS shall not exceed Rs.50,000/- per year. Depending on the workload they may employ a person on part time basis or contract basis or on seasonal basis.
4. The PACS should produce before the DCO a proof of sanction of loan from higher financial agency towards meeting the cost of 1 person employed by them."

According to the 4th respondent, there are only gross profits for the year 2003-04 and its 2% working capital is Rs.11,44,260/- and that the imbalance is Rs.84,12,275/-. Section 116 (c) of the Act provides either 30% of gross profits or 2% of working capital in terms of accruals in a year whichever is less. Therefore, according to the 4th respondent society, the order is inconformity with Section 116 (c) of the Act and G.O.Ms.No.94 Agricultural and Cooperation, (Coop.VI) Department, dated 28.02.2004. As seen from G.O.Ms.No.94, dated 28.02.2004, the Government after consideration, revised the cost of establishment charges and advance for establishment charges keeping in view the scales of operation of the PACSs. The Government has given Benchmark levels of staff and emoluments and ceilings on staff and establishment cost in the aforesaid mentioned G.O. The Benchmark is subject to the condition that the Primary Agricultural Cooperative Society having above Rs.200.00 lakhs business can have the staff strength exceeding those suggested above subject to strict compliance of Sec.116 (c) of the Act. As per this Benchmark, if the business average loans and average deposits is in between 75 to 125 lakhs, the permissible maximum level of staff for a Cooperative Society is one secretary and two clerks. The limit on cost of establishment charges is Rs.80,000/-.

It is an admitted fact that there are eight employees in the 4th

respondent society and the total salary payable to them is Rs.1,97,760/- per year. Therefore, it exceeds the establishment charges as fixed under G.O.Ms.No.94, dated 28.02.2004. The Benchmark is subject to strict compliance of Sec.116 (c) of the Act. As per Sec.116 (c) of the Act, the expenditure towards pay and allowances payable to the employees should not exceed 2% of the working capital or 30% of the gross profit in terms of accruals in a year whichever is less. Admittedly, there is no gross profit to the 4th respondent society and hence the termination orders dated 31.07.2004 have been passed.

Simply because the 4th respondent has not seek any financial assistance as per G.O.Ms.No.308 for payment of salaries to the employees, it does not mean that the 4th respondent is a healthy society and running in profits. After following the due procedure, the termination orders dated 31.07.2004 have been passed along with one months pay in lieu of notice as contemplated under A.P.Shops & Establishment Act, 1988, and the said order was sent to the petitioners and the same was refused. So the act of the 4th respondent cannot be said to be in violation of Sec.116 (c) of the Act as well as G.O.Ms.No.94, dated 28.02.2004.

For the foregoing reasons, the writ petition is devoid of merit and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

Dated: 15.12.204

Dsr

ASSISTANT REGISTRAR

To:

1. The Commissioner for Cooperation and
Registrar of Cooperative Societies,
Nampally, Hyderabad

2. The District Cooperative Officer,
Kakinada, East Godavari District

3. The Divisional Cooperative Officer,
Peddapuram, East Godavari District

4. The Chairman/PIC,
Kotananduru PACS, Kothananduru village &
Mandal, East Godavari District

5. Two CCs to the Government Pleader for
Cooperation, High Court Buildings,
Hyderabad (OUT)

6. Two CD copies.